IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

REVIEW PETITION NO. 44 OF 2000

IN

APPEAL NO. 206 OF 2005

IN

NOTICE OF MOTION NO. 2438 OF 1997

IN

SUIT NO. 2429 OF 1997

Lakhan Channa Kanojia .. Petitioner
V/s
Naina Deepak Kamani & Ors. .. Respondents

Mr.Y.S. Jahagirdar i/b Mr. A. Gadkari for the Petitioner.

Ms. Sheetal Kumar i/b M.M. Patel for Respondent No.1.

Mr. D.D. Madon i/b Mahesh Jani & Co. for Respondent No.7.

CORAM : H.L. GOKHALE &
DR.D.Y CHANDRACHUD, JJ.

DATE : 20TH JANUARY 2005

P.C. :

1. This petition seeks a review of an order dated 3rd July 2000 passed by a Division Bench of this Court, of which one of us (Chandrachud J.) was a party. That order was passed in Appeal No.206 of 2000 which was filed against an order dated 7th February 2000 in Notice of Motion No.2438 of 1997 in Suit No.2429 of 1997.

2. Respondent No.1 to this Review Petition is the owner of the concerned premises which is a flat situated in a building known as "Ramnivas Building" at Pochkhanwala Road, Worli, Mumbai. Respondent No.1 has filed a suit against the Petitioner amongst others to seek possession of the suit premises. In that suit, it was prayed that a Receiver be appointed for the said premises. The learned Single Judge by his order dated 7th February 2000 granted the prayer for a Receiver, and the Receiver was directed to take possession of the flat. On the request of the Petitioner, the Receiver was directed not to evict the Petitioner physically for a period of 4 weeks. The Receiver was also directed to invite bids for appointment of an agent to remain in possession of the premises and to appoint the highest bidder as the agent to be in possession. It is this order which was challenged by the Petitioner in Appeal No.206 of 2000.

3. In para 4 of the order in appeal, the Division Bench recorded that the principal tenant Smt.Kadambande wanted certain orders with respect to these premises, but had failed to obtain the same. The Petitioner was claiming sub-tenancy through her. The Division Bench therefore held that the present Appellant , since he was

claiming sub-tenancy through her, could not have any better title or better claim. The appeal was therefore dismissed by the order dated 3rd July 2000.

4. It appears that in the suit filed by the principal tenant Smt. Kadambande in the Court of Small Causes, an order of status quo came to be passed on 2nd August 2002, by virtue of which the Petitioner continued to remain in possession of the said premises. The Petitioner filed a Special Leave Petition bearing No.11512 of 2000 to the Apex Court against the order of the Division Bench in Appeal No.206 of 2000 dated 3rd July 2000. The Apex Court allowed the Special Leave Petition to be withdrawn in view of this subsequent developments and the intervening order dated 2nd August 2000 passed by the Small Causes Court in which status quo was directed. The Special Leave Petition was allowed to be withdrawn with liberty to move this court for review. It is in pursuance to this order dated 8th August 2000, the present Review Petition has been filed.

5. The Review Petition prays that the order passed by the Division bench on 3rd July 2000 be reviewed. Mr.Jahagirdar, learned counsel for the Petitioner, submits that the subsequent development of the order of status quo granted by the Court of Small Causes had been

noted by the Apex Court and, therefore, liberty was granted to the Petitioner to move this court for review. He submits that there is no use continuing the order directing the Receiver to take possession, which cannot be implemented as of now in view of the order of status quo granted by the Court of Small Causes and which has remained undisturbed in spite of a writ petition to this Court. Ms. Kumar, learned counsel for the landlord, submitted that even if that was to be so, the Petitioner ought to be directed to pay the compensation for occupying the premises which should have been paid all throughout. She also pointed out that the property taxes and other charges which are payable on this flat have not been paid by the Petitioner. She opposed the prayer for review. However, she submitted that in case the order was to be reviewed, there should be an order for appropriate compensation to be decided by the Receiver and which should be paid by the Petitioner.

6. Mr.Madon, learned counsel for Respondent No.7, submitted that discovery of some new and important matter, which is often made a ground for review, has to be something which existed at the date of the order and there cannot be a review of an order which was right when it was made on the ground of happening of some subsequent events. He relied upon the observations of

the Apex Court in para 9 in this behalf in the case of **A.C. Estates v. Serajuddin & Co. reported in AIR 1966 SC 935**. He, therefore, opposed the order being reviewed.

7. We have noted the submissions of the counsel for the contesting parties. Though there is some substance in the submission of Mr.Madon, we also cannot ignore the fact that in matters concerning landlord-tenant relationship, the subsequent developments having a material bearing have to be taken into account. In the present case, in fact that would also be in the interest of Respondents Nos.1 and 7. Mr.Jahagirdar has relied upon a judgment in the case of **P. Venkateswarlu v. Motor & General Traders reported in AIR 1975 SC 1409** in this behalf.

8. In the facts of the present case, in our view, therefore, the order passed by the Division Bench has to be reviewed and modified. Though we are not inclined to vacate the appointment of Receiver which has been made by the learned Single Judge, in our view, the Petitioner should be permitted to remain in possession of the premises as agent of the Court Receiver, which he should remain in provided he agrees to pay the compensation for occupation to be decided by the Court Receiver. He will

also have to pay the outgoings and the charges which have mounted all throughout and, in any case, from the date of filing of the Review Petition, i.e. 20th August 2004.

9. Mr.Jahagirdar, learned counsel for the Petitioner, submits that he should not be required to pay anything more than the standard rent. All that we are asking him is to deposit the amount that may be determined with the Court Receiver. In the event he succeeds in the suit pending in the Court of Small Causes, certainly he will be entitled to take back the difference between the amount deposited and the standard rent. In the event however he fails there, then the interest of the Plaintiff, Respondent No.1 herein, has to be protected and which can only be protected by the order that we are passing.

10. Mr.Jahagirdar points out that interest on an amount of Rs.50,000/- has been paid by Mrs. Kadambande to the original landlord through M/s Ragoson Trading Co. Pvt. Ltd. Ms. Kumar and Mr.Madon point out that these are payments made prior to 1994 by the erstwhile tenant to the party which was supposed to be the landlord at that time, and that this amount should not be adjusted. It will be open to the Petitioner to make submissions to

the Receiver in that behalf and for him to decide.

11. We allow the Review Petition as above to the limited extent. Review Petition stands disposed of.

(H.L. GOKHALE, J.)

(DR.D.Y. CHANDRACHUD, J.)